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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
JAMES A. RICKERT, AS COUNTY TREASURER of Roberts County, South Dakota. } No. 216.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF AND ARGUMENT FOR THE UNITED STATES.

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STATEMENT.

The case comes to this court upon the following certificate from the United States circuit court of appeals, eighth circuit:

> The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Louis Missouri, on the 6th day of January, A. D. 1902, hereby certifies that upon the record on file in said court in the above-entitled cause, wherein the United States of America is appellant and James A. Rickert, as county treasurer in and for Roberts County, South Dakota, is appellee, and which cause is now pending

before this court on appeal from the circuit court of the United States for the district of South Dakota, the following facts appear, namely:

The bill of appellant alleges that this suit is instituted by and under the direction of the Attorney-General of the United States; that the said James A. Rickert is the duly elected, qualified, and acting county treasurer in and for the county of Roberts, in the State of South Dakota; that Charles R. Crawford, Adam Little Thunder, Solomon Two Stars, and Victor Renville *are Indians and members of the Sisseton band of Sioux Indians in the State of South Dakota, and are now and at all times hereinafter mentioned were wards of the United States and under the guardianship and supervision of the United States, and are now and at all times hereinafter mentioned were residents of that portion of the Sisseton Agency situated and being in the county of Roberts, State of South Dakota;* that the said Indians are now holding, and for several years last past have held, allotted lands in said Roberts County and within the former Sisseton Indian Reservation, which lands were *allotted to the said Indians under the provisions of the agreement of December 12, 1889, as ratified by the act of March 3, 1891, and more particularly under Section V of the general allotment act, approved February 8, 1887;* that the lands allotted by the United States to the said Indians are now and at all times hereinafter mentioned were held in trust by the United States under the provisions of said general allotment act. (The descriptions are omitted.)

That during the year 1900 the duly authorized officers of Roberts County, South Dakota, listed certain improvements on the allotted lands of said Charles R. Crawford and returned the assessment upon the improvements on said allotted lands at the sum of six hundred thirty ($630.00) dollars, which said improvements consisted of a large frame house and barn attached to, a fixture and a permanent improvement upon, the said allotted lands, and other improvements of a permanent character attached to the said allotted lands; that the amount of taxes extended on the tax roll upon said improvements for State and county purposes for the year 1900 was the sum of twenty-one dollars and forty-two cents ($21.42); that for the said year 1900 the officers of said Roberts County listed and assessed and returned upon the tax rolls of said county certain personal property against said Charles R. Crawford, consisting of horses, one cow, and two wagons at the aggregate valuation of one hundred and twenty-nine dollars ($129), upon which was assessed and levied a tax of four dollars and ninety cents ($4.90); that said personal property was issued to the said allottee by the United States, appellant herein, pursuant to the statutes of the United States and the treaties between the United States and the band of Indians to which this Crawford belongs, was branded "I. D.," and was then and there in the possession of said allottee and was kept and used by the said allottee upon his said allotment.

The bill contains similar allegations regarding the other Indians named therein, covering the years 1899 and 1900; that the defendant as county treasurer and collector of taxes for the said county of Roberts threatens to and is about to sell the property heretofore described as that of the Indians named in the bill and assessed for the years above stated, and will sell the same unless restrained and the plaintiff and appellant will be subjected to and compelled to defend a multitude of actions and a multiplicity of suits and proceedings caused thereby, which will greatly embarrass complainant; that the assessments of said property and the amounts of taxes so assessed as aforesaid and returned upon the tax roll of said county are upon the books of Roberts County, South Dakota, and of record in said county in the office of the county auditor and treasurer, and are a cloud upon the title of the lands of complainant above referred to. The bill further alleges that complainant and appellant is without any plain, adequate, and speedy remedy at law, and can only have relief in a court of equity, and that irreparable injury will be inflicted upon complainant in case the enforcement of the assessment and collection of said taxes is not enjoined.

To this bill of complaint the defendant and appellee demurred, upon the grounds:

First. That said bill of complaint does not disclose any equity.

Second. That said bill of complaint does not entitle the complainant to the relief prayed or otherwise.

Third. That the complainant has no interest in the subject-matter of the suit.

Fourth. That the property assessed by Roberts County, of which defendant and appellee is treasurer, is personal property, and an injunction will not lie to restrain its collection.

Fifth. That complainant and appellant has an adequate remedy at law.

Upon the hearing said demurrer was sustained, and appellant failing to amend its bill within the time allowed by the court for such purpose, the court on the 15th day of March, 1901, dismissed the bill upon the merits of the suit, which decree was duly entered of record. Afterwards in due season, to wit, on the 28th day of March, 1901, the record in the proceeding was duly removed by appeal to the United States circuit court of appeals for the eighth circuit, where it still remains, and the cause is yet undecided.

And the said United States circuit court of appeals hereby certifies that, to the end that it may properly decide said case, it desires the instruction of the Supreme Court of the United States upon the following questions or propositions of law arising therein, which are duly raised and presented by the record in said case:

First. Were the lands held by the allottee, Charles R. Crawford, and the other Indians named in the bill, subject to assessment and taxation by the taxing authorities of Roberts County, S. Dak., in 1899, and 1900?

Second. Were the permanent improvements, such as houses and other structures, upon the

lands held by allotment by Charles R. Crawford and the other Indians named in the bill subject to assessment and taxation by the taxing officers of Roberts County as personal property in 1899 and 1900?

Third. Was the personal property, consisting of cattle, horses, and other property of like character, which had been issued to these Indians by the United States, and which they were using upon their allotments, liable to assessment and taxation by the taxing officers of Roberts County in 1899 and 1900?

Fourth. Has the United States such an interest in this controversy or in its subjects as entitles it to maintain this suit?

Fifth. Has the United States a remedy at law so prompt and efficacious that it is deprived of all relief in equity?

In witness whereof the undersigned judges of the said United States circuit court of appeals for the said eighth circuit have hereunto set their hands this 6th day of January, A. D. 1902, at St. Louis, Mo., and hereby order and direct that the foregoing certificate be filed in said United States circuit court of appeals and by the clerk of said court be duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL,
WALTER H. SANBORN,
AMOS M. THAYER,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

The agreement referred to in the foregoing certificate and ratified by act of March 3, 1891, section 26 (26 Stat., 989, 1035–1038), so far as material, provides:

> It is further stipulated and agreed that there shall be allotted to each individual member of the bands of Indians, parties hereto, a sufficient quantity, which, with the lands heretofore allotted, shall make in each case one hundred and sixty acres, and in case no allotment has been made to any individual member of said bands, then an allotment of one hundred and sixty acres shall be made to such individual, the object of this article being to equalize the allotments among the members of said bands, so that each individual, including married women, shall have one hundred and sixty acres of land; and patents shall issue for the lands allotted in pursuance of the provisions of this article, upon the same terms and conditions and limitations as is provided in section five of the act of Congress, approved February eighth, eighteen hundred and eighty-seven, hereinbefore referred to.

By some mistake or inadvertence appellee's counsel cite and quote, on page 2 of their brief, section 11 of the act of March 2, 1889 (25 Stat., 888, 891), relating to the general Sioux Reservation, instead of the above section from the act relating specially to the Sisseton and Wahpeton Sioux.

Section 5 of the general allotment act of February

8, 1887 (24 Stat., 388, 389–390), referred to in said agreement, so far as material, provides:

> That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs, according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void. * * *
>
> The patents aforesaid shall be recorded in the General Land Office, and afterwards delivered, free of charge, to the allottee entitled thereto. * * *

Section 6 of the same act reads:

> SEC. 6. That upon the completion of said allotments and the patenting of the lands to said

allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States, to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

The lands taxed in the present case are a part of the reservation established by the second subdivision of Article III of the treaty of February 19, 1867 (15 Stat., 505), which, among other things, by Articles V and VII, provided:

ARTICLE V. The said reservations shall be apportioned in tracts of (160) one hundred and sixty acres to each head of a family, or single

> person over the age of (21) twenty-one years, belonging to said bands, and entitled to locate thereon, who may desire to locate permanently and cultivate the soil as a means of subsistence; each (160) one hundred and sixty acres so allotted to be made to conform to the legal subdivisions of the Government surveys, when such surveys shall have been made; and every person to whom lands may be allotted under the provisions of this article who shall occupy and cultivate a portion thereof for five consecutive years shall thereafter be entitled to receive a patent for the same so soon as he shall have fifty acres of said tract fenced, ploughed, and in crop: *Provided*, [That] said patent shall not authorize any transfer of said lands, or portions thereof, except to the United States, but said lands and the improvements thereon shall descend to the proper heirs of the persons obtaining a patent.
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> ARTICLE VII. An agent shall be appointed for said bands, who shall be located at Lake Traverse; * * *

This "Sisseton Agency" has ever since been maintained, and appropriations are annually made therefor by Congress (31 Stat., 221, 1058; 32 Stat., 245).

In respect to these Indians, Congress, by section 5 of the act of March 3, 1863 (12 Stat., 819, 820), provided:

> * * * Said Indians shall be subject to the laws of the United States, and to the criminal laws of the State or Territory in which they may happen to reside. They shall also be subject to

such rules and regulations for their government as the Secretary of the Interior may prescribe; but they shall be incapable of making any valid civil contract with any person other than a native member of their tribe, without the consent of the President. The Secretary of the Interior shall also make reasonable provision for the education of said Indians, according to their capacity and the means at his command.

The enabling act of February 22, 1889 (25 Stat., 676, 677), under which South Dakota and other States formed for themselves State constitutions and were admitted into the Union, required such States by their constitutional conventions to provide, by ordinances irrevocable without the consent of the United States and the people of said States:

* * * * *

Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; * * * that no taxes shall be imposed by the States on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing

herein, or in the ordinances herein provided for, shall preclude the said States from taxing as other lands are taxed any lands owned or held by any Indian *who has severed his tribal relations*, and has obtained from the United States or from any person *a title* thereto by patent or other grant, *save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said States so long and to such extent as such act of Congress may prescribe.*

The State of South Dakota provided by Article XXII of its constitution:

> That we, the people inhabiting the State of South Dakota, do agree and declare that we forever disclaim all right and title to the unappropriated public land lying within the boundary of South Dakota and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States: and all Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; * * * that no taxes shall be imposed by the State of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein shall preclude the State of South Dakota

> from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States, or from any person, a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation. All such lands which may have been exempted by any grant or law of the United States shall remain exempt to the extent and as provided by such act of Congress.

The general proposition, that Indians while living in the tribal relation and excluded from citizenship by the States are wards of the United States and their property and persons are a matter of its concern and exclusive jurisdiction, is conceded by appellee. But it is insisted that where allotments in severalty have been made and full rights of citizenship have been accorded to Indians, they cease to be wards of the Government, and they and their property become in all respects amenable to the law of the State whereof they are citizens. As basis for his contention, appellee relies upon section 6 of the act of February 8, 1887, *supra*, the fourteenth amendment to the Constitution of the United States, and the declaration of section 1992 of the Revised Statutes of the United States, viz:

> All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

The provisions of the constitution and law of South Dakota here material are:

> ARTICLE VII. Section 1. Every male person resident of this State who shall be of the age of twenty-one years and upwards, not otherwise disqualified, belonging to either of the following classes, who shall be a qualified elector under the laws of the Territory of Dakota at the date of the ratification of this constitution by the people, or who shall have resided in the United States one year, in this State six months, in the county thirty days, and in the election precinct where he offers his vote ten days next preceding any election, shall be deemed a qualified elector at such election.

Section 2, act of March 1, 1889, South Dakota, provides:

> SEC. 2. [Qualification.] Section number 47 of chapter 27 is hereby amended by striking out the whole thereof and substituting in its place the following:
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> Section 47. Every male person above the age of twenty-one years who shall have been a resident of the United States for one year, of the Territory for six months, three months in the county, and thirty days in the precinct next preceding the election, who is a citizen of the United States, or who has declared his intention to become such, and shall have taken an oath to support the Constitution of the United States, and persons who have been declared by law to be citizens of the Territory and shall have complied with the provisions of any

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law which is now or may in future be in force relating to the registration of voters shall be entitled to vote, and all persons possessing the qualifications mentioned in this section, and who have resided in this Territory twelve months, shall be eligible to any office in the said Territory: *Provided, however*, That persons shall vote in the precincts where they reside and not elsewhere, provided this act shall not be held to deprive any person of the right to vote who is entitled thereto under the laws of this Territory.

It is claimed that as Indians thus are accorded all the rights and protection of the law accorded to other citizens of the United States, therefore property of Indians is subject to taxation under the revenue law of the State (act March 10, 1897, section 2), which provides for taxation of all real and personal property in the State and all personal property of persons residing therein.

POINTS AND ARGUMENT.

I.

Under the agreement ratified by the act of March 3, 1891, and under the act of February 8, 1887, the lands of Indian allottees are not taxable under authority of the State during the trust period.

First. The general proposition that the political status of tribal Indians is that of pupilage under wardship of the General Government, being established by an unbroken line of decisions and practice from the origin of the Government is perfectly familiar to the

knowledge of all well-informed persons. In *United States* v. *Kagama* (118 U. S., 375, 383) it is said:

> These Indian tribes *are* the wards of the nation. They are communities dependent on the United States—*dependent* largely for their daily food, dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen.
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> * * * * *
>
> The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that Government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.

This governmental wardship and control extend to both person and property.

The courts have also uniformly held that the duty

and jurisdiction to exercise such control and wardship being so vested in the General Government, the manner of its exercise is purely a political question for determination by the political departments and not within judicial cognizance. *Thomas* v. *Gay* (169 U. S., 264, 271); *Stephens* v. *Cherokee Nation* (174 id., 445, 483–4–5); *Cherokee Nation* v. *Hitchcock* ————; *Lone Wolf* v. *Hitchcock* ————). In one of the latest expressions of the court, *Cherokee Nation* v. *Hitchcock*, December 1, 1902, it was said that—

> * * * The power existing in Congress to administer upon and guard the tribal property, and the power being political and administrative in its nature, the manner of its exercise is a question within the province of the legislative branch to determine, and is not one for the courts.

Turning to acts of Congress, it is clear that the political department of the Government has not yielded its control over the Indians' allotted lands. Section 5 of the allotment act (24 Stat., 388, 389) is clear in this respect. The first or trust patent is not to be a conveyance of title, but, in the words of the act—

> shall be of the legal effect and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs, according to the laws of the State or Territory where such land is located, and that *at the expiration of said period the United States will*

> *convey the same by patent * * * in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided,* That the President of the United States may in any case in his discretion extend the period.

The Government having in exercise of its political powers assumed the trust and defined its terms, these terms are not reviewable by the courts. It is a political question purely, and its determination by the political department precludes judicial action.

Second. The legal title of the United States is not divested by the instrument which has come to be known as a first or trust patent. That instrument amounts simply to a covenant to stand seized to the use of the allottee, with a promise to convey at the expiration of the fixed trust period or of such extended period as the President, in his discretion, may prescribe.

In the case of *Lizzie Bergen* (30 Land Decisions, 258, 261), the Secretary of the Interior, construing the allotment act, held:

> * * * The use of the word "patent" to designate or give a name to the instrument to be thus issued is not a happy choice of language. The Supreme Court has described a patent as follows (*Langdeau* v. *Hanes*, 21 Wall., 521, and *Wright* v. *Roseberry*, 121 U. S., 488, 499):
>
> "In the legislation of Congress a patent has a double operation. It is the conveyance by the Government when the Government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously ex-

isting title, it is documentary evidence having the dignity of a record, of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation."

It is clear that the instrument to be issued upon the approval of an allotment is not, and is not intended to be, a conveyance of the interest or title of the Government, nor is it issued in confirmation of previously existing title. By the context it is shown that the purpose of that instrument is to evidence a present trust, coupled with a promise to convey in the future. * * *

[265.] * * * the allotment acts themselves bear affirmative evidence that their administration is to be under the supervision of the Secretary of the Interior. The period of this supervision will continue so long as the legal title remains in the United States; that is, until the matter of transferring to the Indian allottee the title of the United States is completed. * * *

If the trust instrument, inaptly termed a "patent," conveyed to the Indian a legal title, no further instrument would be necessary at expiration of the trust period to convey the legal title already vested, or yet to terminate the trust or the disability of the Indian to convey. In such case the trust period, or disability, would be limited by the terms of the original instrument, and no further instrument declaring the termination of the disability would be necessary, for that would be a mere matter of computation.

It follows that the land during the trust period is either (1) the property of the United States, or (2)

Indian tribal land charged with a special trust to the individual allottee. It is immaterial for the present case which view should obtain. In either event, whether the land during the trust period belongs to the United States or to the tribe, it is within the second subdivision of conditions imposed by the enabling act and accepted by the State by the twenty-second article of its constitution, and is not taxable.

Third. The United States is not only holder of the legal title, but is specially interested therein by reason of its covenant that—

> * * * at the expiration of said period the United States *will convey by patent* * * * *in fee* discharged of said trust and *free of all charge or incumbrance whatsoever.*

If, in the meantime, these lands may for twenty-five years be taxed and penalties and interest accumulate, the Government must by terms of its covenant discharge such incumbrance or violate its covenant obligation. It follows that the tax upon allotted trust land, if permitted, is in effect a tax against the Government itself, amounting to a charge upon the Treasury of the United States. The mere statement of the ultimate legal effect of permitting taxation of the allotted land is in itself decisive of the question, and shows such a tax to be violative of the conditions imposed by the enabling act and accepted by the State.

Fourth. The bill alleges and the demurrer admits that these Indians, though ultimately entitled to receive certain of the reservation lands in severalty free of all

charge or incumbrance whatsoever, are still under tribal organization, are wards of the Government, and are under the care of an agent. Their case is therefore identical with that of the Kansas Indians (5 Wall., 737), wherein the court held (p. 756):

> * * * But the action of the political department of the Government settles, beyond controversy, that the Shawnees are as yet a distinct people, with a perfect tribal organization. Within a very recent period their head men negotiated a treaty with the United States, which, for some reason not explained in the record, was either not sent to the Senate, or, if sent, not ratified, and they are under the charge of an agent who constantly resides with them. While the General Government has a superintending care over their interests, and continues to treat with them as a nation, the State of Kansas is estopped from denying their title to it. She accepted this status when she accepted the act admitting her into the Union. Conferring rights and privileges on these Indians can not affect their situation, which can only be changed by treaty stipulation, *or a voluntary abandonment of their tribal organization.* As long as the United States recognizes their national character they are under the protection of treaties and the laws of Congress, and their property is withdrawn from the operation of State laws.
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> [Page 758.] It is argued, because the Indians seek the courts of Kansas for the preservation

> of rights and the redress of wrongs, sometimes voluntarily, and in certain specified cases by direction of the Secretary of the Interior, that they submit themselves to all the laws of the State. But the conduct of Indians is not to be measured by the same standard which we apply to the conduct of other people. Kansas is not obliged to confer any rights on them. Because a sound policy may dictate the wisdom of treating them, in some respects, as she treats her own citizens, and thereby weaning them from the ancient attachment to their own customs, they are none the less a separate people, under the protection of the General Government. This policy may eventually succeed in disbanding the tribe, *but until it does, the Indians can not look to Kansas for protection, nor can the general laws of the State taxing real estate within its limits reach their property.*

This doctrine was adhered to in New York Indians. (5 Wall., 761, 769.)

Fifth. The realty—and also the personalty, as will be shown further on—is but an agency employed by the Government to carry into effect its policy of civilizing the Indian and preparing him for citizenship. The States have no power, by taxation or otherwise, in any manner, to burden or control the governmental agencies of the United States acting in one of its appropriate and exclusive spheres of action.

July 27, 1888, this question, under this and similar statutes of March 3, 1875 (18 Stat., 420), and July 4,

1884 (23 Stat., 96), was fully considered by the Attorney-General (19 Op. Atty.-Gen., 161, 165), who said:

> Has Congress signified a purpose to withhold from State or Territorial taxation lands held under the above-named statutes? That is the question submitted for opinion.
>
> The act of 1875 (*supra*) declares (section 15) that the Indian's title to land entered by him under that act "shall not be subject to alienation or incumbrance, either by voluntary conveyance or the judgment, decree, or order of any court, and shall be and remain inalienable for a period of *five* years from the date of the patent issued therefor."
>
> The act of 1884 (*supra*) extends the benefits of the homestead laws "to such Indians as may *now* be located on public lands, or as may, under the direction of the Secretary of the Interior, or otherwise, hereafter so locate." This law requires that each patent issued under it shall declare that the United States will hold the lands entered for the period of *twenty-five* years in trust for the sole use and benefit of the Indian by whom the land was entered, or his widow and heirs in case of his decease, and that at the expiration of said period the United States will issue a patent to such Indian, or his widow and heirs, in fee, "*discharged of said trust and free of all charge or incumbrance whatsoever.*"
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> * * * * *
>
> It would be a great mistake to hold that the United States is an ordinary trustee of the lands entered by Indians under the act of 1875 and 1884, for it is in its sovereign character as the

guardian and protector of the Indians, and in the performance of a high and sacred duty to them, the due execution of which is of great importance to the United States, that it assumes the relation of trustee; and the trust created by the act is nothing less than the means or instrumentality employed by the United States for the performance of that duty. Now, nothing is better settled under the Constitution than that no State or Territory has power to lay a tax on a means or instrumentality used by the United States in the performance of a duty appertaining to that Government. Said Chief Justice Marshall, in *Weston* v. *The City of Charleston* (2 Peters, 467): "The States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government." (*McCulloch* v. *Maryland*, 4 Wheat., 316; *Osborn* v. *The Bank of the United States*, 9 Wheat., 738. See also *Railroad* v. *Peniston*, 18 Wall., 38, for a very full discussion of the subject.)

* * * * *

The intention of the act of 1875 being to provide a way for starting the Indian to live in a civilized way and educate him to be a good citizen, it would be a strange thing, indeed, to find that Congress had made its plan for that purpose dependent on the Indian's ability and disposition to pay the taxes assessed on his land. It is unnecessary to argue that such an interpretation would defeat the manifest intention of Congress and involve the inconsistency

of treating the Indian as helpless and dependent and at the same time as able to take care of himself.

* * * * *

I am also of opinion that the allotment lands provided for in the act of 1887 are exempt from State or Territorial taxation upon the ground above stated with reference to the act of 1884, namely, that the lands covered by the act are held by the United States for the period of twenty-five years in trust for the Indians, such trust being an agency for the exercise of a Federal power, and therefore outside the province of State or Territorial authority.

Again, March 12, 1890 (19 Op. Att'y-Gen., 511), a kindred subject was considered, and, referring to his former opinion, the Attorney-General said:

As will be seen by that opinion, the conclusions there reached rest largely upon the proposition that notwithstanding the Indians, by taking separate allotments, have made a first and a long step toward civilization and independent citizenship, yet they are still in a state of pupilage and under the guardianship of the General Government. Upon the same ground, I am clear that it has not been the intention of Congress, in any legislation so far, to put these Indians, who take such separate allotments, entirely upon their own resources, or to withdraw the Government's guardianship, supervision, and protection. The fact, if there were no other, that their lands so allotted are made inalienable, that the allottee has no power to cumber or charge the same with debt, would be

> a clear indication that Congress had not intended to remit him to courts of law for the protection of those lands; for it would be worse than idle to expect that a man so untutored, so improvident, so much of a child that he can not be trusted with a control over his property, would be able, without any power to charge that property for any purpose, to protect the same in a court of law. In other words, I am entirely clear that it is the duty of the Government to protect these Indian allottees in the enjoyment of their allotments.
>
> * * * * *
>
> The Indian title to the lands allotted in these reservations under the act of March 2, 1889, is modified, but I do not think it can be said to be extinguished. In pursuance of treaties with the Indians the lands are partitioned in severalty to the Indians, not because the ordinary Indian title has been totally extinguished, but because the Indians have consented to such arrangement. This being so, and in view of the relation of guardianship the Government still bears, and the duty of protection it still owes to these Indians, I have no doubt of the right of the President to use the troops for the protection of these allotments.

The general holding of the Federal courts, and, to considerable extent, that of the State courts also, under the act of February 8, 1887 (*supra*), is that the act making the Indians citizens does not of itself take them from the condition of pupilage or remove them from the control of the Government, but is only a step

looking to that end; that it rests with the United States to declare when its guardianship is terminated and the work it has undertaken is accomplished. To this effect are *Eells et al.* v. *Ross* (64 Fed., 417, 420); *Beck* v. *Flournoy Live Stock Company* (65 Id., 30, 35); *United States* v. *Flournoy Live Stock Company* (69 Id., 886, 892); *Farrell* v. *United States* (110 Id., 942); *State* v. *Columbia George* (Oreg., 65 Pac., 604); *Auditor-General* v. *Williams* (94 Mich., 180); *Cherokee Nation* v. *Hitchcock* (187 U. S., ——, next to last paragraph).

In *Farrell* v. *United States* (*supra*), the effect of these treaties and statutes was very fully considered by the circuit court of appeals, eighth circuit, upon an indictment, under the act of January 3, 1897 (29 Stat., 506), for selling spirituous liquors to one of this tribe of Indians, living on allotted lands in this former reservation. It was claimed in defense, as is claimed here, that the legal effect of these statutes was to emancipate the Indians from pupilage, to fully subject them to State laws, and to all obligations of other citizens. Judge Sanborn, delivering the opinion of the court (p. 948) said:

> The great desideratum sought by this policy was the abandonment by the Indians of the chase—of the wandering, idle, pastoral life to which they were addicted, and from which they were unable, as their reservations diminished, to obtain sustenance—the adoption by them of agricultural pursuits, and the permanent occupation and cultivation by each Indian of a separate tract of land, by means of which he could

obtain for himself and for his family a comfortable living, and could relieve the Government of his dependence. This purpose is evident in nearly all the legislation, treaties, and acts of Congress which deal with the Sisseton and Wahpeton bands. In 1863 the home of these bands was in the State of Minnesota, and Congress passed an act for their removal beyond the confines of the States, which provided that the President should set apart for them a tract of land without the States sufficient to enable him to assign 80 acres of good agricultural land to each Indian; that the money annually appropriated for them should not be paid in money, but should be expended in such manner as would "in the judgment of the Secretary of the Interior best advance the Indians in agricultural and mechanical pursuits and enable them to sustain themselves without the aid of Government."

The opinion held that the Government (p. 950)—

had the same right and authority to retain this power of control over the commerce with these Indians that it had to retain the title to their lands in trust for them for twenty-five years or longer.

* * * * *

It did not radically change the title to the lands reserved for them, or their need of care and education. The Government held the title to their reservation in trust for them collectively before, it held the title to their allotments in trust for them individually after the issue of the patents.

* * * * *

> Neither the act of 1887 nor any other act of Congress or treaty with these Indians required those who selected allotments and received patents and the privileges and immunities of citizenship to sever their tribal relation, or to surrender any of their rights as members of their tribes, as a condition of the grant, so that after their allotments, as before, their tribal relation continued. * * *
>
> It is the settled rule of the judicial department of the Government, in ascertaining the relations of Indian tribes and their members to the nation, to follow the action of the legislative and executive departments, to which the determination of these questions has been especially intrusted. (*United States* v. *Holliday*, 3 Wall., 407, 419; 18 L. Ed., 182; *United States* v. *Earl* (C. C.), 17 Fed., 75, 78.)

Though the question before the court was there different from the question at bar, the underlying principles upon which the determination of that question depended must determine the question here, and it seems logically to follow that the lands so allotted are not taxable.

It is contended that the constitution and laws of South Dakota accord Indian allottees full political rights, that the law of South Dakota and section 6 of the general allotment act declare them entitled to "the equal protection of the law," and that liability to taxation follows.

This conclusion does not follow from the premise. Kansas Indians (5 Wall., 737, 758).

Section 6 does not profess to dissolve the tribal relation of Indians receiving allotments. Where not otherwise specifically provided by Congress, the severance of tribal relation is left to the Indians' voluntary act. Said section accords and assures to both tribal and nontribal Indians the protection of the civil and criminal laws, and leaves the matter of continued tribal existence untouched.

The tribal Indians are given the "rights, privileges, and immunities of citizenship," but they are held in pupilage. As this is a political question solely within the power of Congress, the pupilage must continue until Congress, or the executive in administration of the law, terminates the relation and emancipates the ward. *The law and constitution of South Dakota can not terminate the pupilage that the Government of the United States has established, asserts, and continues. While it does continue the State is obligated by the condition imposed by the enabling act and accepted by the State, which exempts the land during the trust period from alienation or incumbrance by any means, direct or indirect, without consent of the United States.* If the lands were property of the United States as incident to their sovereignty, they were exempt from taxation by the State, independently of any provision of the enabling act or of the State constitution accepting it. *Van Brocklin* v. *State of Tennessee* (117 U. S., 151); *Wisconsin R. R. Co.* v. *Price County* (133 U. S., 496).

In *State* v. *Columbia George* (65 Pac. Rep., 610) the supreme court of Oregon says:

> It would seem, therefore, that citizenship, such as extends, within the purview of the Dawes Act [general allotment act], to Indian allottees, is neither inconsistent nor incompatible with the status of a tribal Indian; that the Government, while it has bestowed citizenship, has not thereby relinquished the guardianship of the tribes, indulging them yet a little while, but with greatly restricted authority, in their primitive government; and until the General Goverment has taken its hands off and relinquished supervision over its Indians, the State courts can not assume jurisdiction touching the criminal acts of one against another.

Sixth. The ordinary rule that statutory or other provisions exempting property from taxation are to be strictly construed is wholly inapplicable here. This controversy bears no relation to that of a transportation, manufacturing, or other company engaged in business for profit, possessing opportunities fully equal to others engaged in the same business, and seeking by virtue of some doubtful statutory or charter provision to escape its equal share of the public burden. Those whose protection the Government is here asking are Indians, dependent people, but recently rescued from savagery, and still wholly unable to engage in the battle of life on equal terms with their white neighbors. With no natural or inherited inclination toward house-dwelling, tillage of the soil, or civilization,

they are now being led in these directions by the Government. As a part of this plan they were induced to enter into an agreement with the United States whereby they were to take allotments in severalty from their tribal lands, and to cede to the United States their surplus lands. As a part of this arrangement it was agreed that the allotments should be taken under section 5 of the general allotment act. We have then an Indian tribe making an agreement respecting tribal lands, and an act of Congress ratifying this agreement. For present purposes, therefore, section 5 of the general allotment act is as much a part of this agreement as if it had been literally copied therein. The rule for interpreting such an agreement is well established. In *Worcester* v. *The State of Georgia* (6 Pet., 515, 582) it is said:

> The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word "allotted," in reference to the land guaranteed to the Indians in certain treaties, indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.

In *Choctaw Nation* v. *United States* (119 U. S., 1, 28) it was further said:

> The recognized relation between the parties to this controversy, therefore, is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, formulating the rights and obligations of private persons equally subject to the same laws.

See also *Kansas Indians* (5 Wall., 737, 760); *Minnesota* v. *Hitchcock* (185 U. S., 373, 396).

The understanding at which the Indians would naturally arrive from a consideration of the language of section 5 of the general allotment act is obviously that at the end of the trust period they would receive from the United States a perfect title to the allotted land "*free of all charge or incumbrance whatsoever*"—that is, free from all charge or encumbrance, no matter what its basis or origin, and no matter by what authority sought to be imposed. Of a somewhat similar pro-

vision, adopted in pursuance of the same purpose and policy, this court said, in the case of *Kansas Indians* (*supra*, p. 760):

> Applying this principle to the case in hand, is it not evident that the words "levy, sale, and forfeiture" are susceptible of a meaning which would extend them to the ordinary proceedings for the collection of taxes? Taxes must be first levied, and they can not be realized without the power of sale and forfeiture in case of non-payment. The position, it seems to us, is too plain for argument. The object of the treaty was to hedge the lands around with guards and restrictions, so as to preserve them for the permanent homes of the Indians. In order to accomplish this object they must be relieved from every species of levy, sale, and forfeiture—from a levy and sale for taxes, as well as the ordinary judicial levy and sale.

Seventh. These Indian allottees do not have a complete right to a patent—one conveying to them the fee. Their situation is not like that of an entryman under the public-land laws who has fully complied with the law under which his entry is made and has received from the local land officers a certificate reciting that fact and stating that he is entitled to receive a patent for the land embraced in his entry. Without awaiting the issuance of a patent, such an entryman may, in his discretion, convey or contract with respect to the land entered by him, and this without in any respect jeopardizing or defeating the purpose underlying the law under which his entry is made. These

Indian allottees can not lease (save in exceptional instances and with the approval of the Secretary of the Interior—act of February 28, 1891, sec. 3, 26 Stat., 795), encumber, or sell the allotted lands, or make any contract with respect to them. Their right to a patent is still incomplete. Congress and the Indians, by the terms of the ratified agreement, have deliberately expressed their conviction that the Indians will, for the period of twenty-five years, continue to be incapacitated and unprepared to receive a conveyance in fee of the allotted lands, or to exercise the privileges or meet the responsibilities of full ownership.

And, anticipating that even then the allottees or some of them may not be capacitated or prepared to deal with the allotted lands as their own, Congress and the Indians have declared "that the President of the United States may in any case, in his discretion, extend the period." Nor was it thought that the purpose of the Government and the interests of the allottee would be adequately conserved by presently issuing to the allottee a patent conveying the fee, but prohibiting him from conveying or contracting with respect to the allotted land during his period of incapacity. To more certainly effect the purpose of Congress and protect the Indian ward in his new home it was determined to give him, instead of a present conveyance, an instrument containing the promise of Congress that upon the termination of his incapacity or state of dependence, namely, at the expiration of twenty-five years, or such longer period as the President, in his discretion, shall fix, "the United

States will convey" the allotted land "by patent to said Indian or his heirs as aforesaid in fee," etc.

It is thus manifest that these allottees do not have the title to the lands allotted to them, and do not have any present right to demand or receive such title. The case of *Railway Company* v. *Prescott* (16 Wall., 603, 608), instead of supporting appellee's contention, is clearly an authority that State taxation upon unpatented lands is not permissible where it will operate to defeat the intent of Congress or any reserved right of the Federal Government.

Of the necessity for extended Federal jurisdiction and control over Indian lands, the supreme court of North Dakota, in *State ex rel. Denoyer* (6 North Dakota, 586, 593), says:

> Wherein, then, lies the difference in the jurisdiction exercised by the General Government over the lands of the public domain and over Indian reservations or Indian lands? When we turn to the enabling act we see that it required the State to "forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereof shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States." Thus far the statute is dealing with the title to the land only, and the unappropriated public lands and lands owned or held by an Indian or Indian tribes are placed upon the same basis or footing

so far as the right of the United States to dispose of the title is concerned. But the statute immediately adds, "and that said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States."

This provision applies to Indian lands only, and it is not confined to the matter of title. It deals with a jurisdiction that extends to the lands themselves, and must have intended a more enlarged jurisdiction than was conferred by the preceding language. Does it thereby create a jurisdiction as exclusive as in cases of lands ceded to the United States by a State for specific purposes, as hereinbefore considered? *The reasons which actuated Congress in thus retaining the broader jurisdiction over the Indian lands are perfectly apparent. These Indian lands are now universally held by the Indians under some treaty or contract with the United States, and common good faith required Congress to retain all the jurisdiction over these lands necessary to enable the United States to fulfill its treaty and contract obligations. Moreover, a well-recognized moral obligation rests upon the General Government to care for these unfortunate wards of the nation. This duty can not be performed unless the General Government retains the right to exclude the white race from the Indian lands; otherwise the Indian will be speedily dispossessed. Government must retain the power to establish agencies, erect schoolhouses and churches, and introduce all desired civilizing influences, without being in any manner dependent upon the State. This increased jurisdiction was required for the best welfare of the Indian,*

and was in line with the governmental policy which seeks to convert the nomadic savage into the civilized citizen.

It is therefore clear that the lands of these Indians are not taxable during the trust period, and that the first question must be answered in the negative.

II.

The permanent improvements, houses, and structures are realty and can not by State legislation be severed, notionally, from the land itself for purposes of taxation.

Without doubt, the State having power to tax may classify the subjects of taxation and in so doing may classify as personalty property savoring of the character of realty, such as the possessory claim of a miner under the public land laws, or buildings and structures of a vendee upon lands which he has purchased, but for which he has not paid and title to which he has not acquired. The State may do this as between itself and citizens subject to the taxing power and having diverse interests in property subject to taxation. It may under such circumstances be done for the purpose of adjusting equities of the partial owners or to reach property interests or rights that otherwise might escape its proper share of the public burden.

But it is submitted that *such severance can not be done as an expedient to reach in part property not taxable, and to evade the obligation assumed that it shall not be taxable.* The condition named in the enabling act, and accepted by the State, was "irrevocable without the consent of the United States." If the State could not, of its own

motion, directly revoke its undertaking, then obviously it can not do so indirectly by classification of the property in part as realty and in part as personalty.

Improvements upon Indian lands were necessarily contemplated by the United States and the State at its admission. The whole policy of Indian legislation by Congress has been to reclaim and uplift the Indians from savagery, seat them on lands, lead them to adopt a civilized life, and ultimately to bring them into full citizenship. This was foreshadowed in the fifth and seventh articles of the treaty of 1867 (*supra*), and has pervaded all legislation and regulations of the Indian Department. Thus, "The Regulations of the Indian Office" of 1880, sections 231 to 240, inclusive; of 1884, sections 486 to 495, inclusive; of 1894, sections 563 to 573, inclusive, instructed the Indian agents that—

> 486. The chief duty of an agent is to induce his Indians to labor in civilized pursuits. To attain this end every possible influence should be brought to bear, and in proportion as it is attained, other things being equal, an agent's administration is successful or unsuccessful. [Sec. 231, *Ins.* 1880.]
>
> 488. An agency farm should be used as a school where Indians shall be taught to labor, not by watching others, but by taking hold themselves. It is believed, however, that the best and most permanent results will be realized where the agency farm is abandoned, and all the time and effort of agency employees are expended in persuading Indians to cultivate

small patches or farms of their own, and in directing and aiding such individual effort, even though the manner of farming be rude and the crops much smaller than a model agency farm would have produced. A well-ordered agency farm and "establishment" is far less creditable to an agent than a large number of comparatively unprofitably managed Indian farms, which will awaken in their Indian owners a sense of proprietorship, and will serve as beginnings in the direction of self-support. (See section 354.) [Sec. 233, *Ins.* 1880.]

489. The practice of purchasing seed every year for the use of the Indians should be discontinued, and each Indian employed in agricultural pursuits should be required to turn over to the agent to store for his use such quantity of grain, etc., as the agent shall consider proper and necessary for his next year's seed. [Sec. 234, *Ins.*, 1880.]

490. Indians should be persuaded, as far as possible, to exchange their ponies for cattle, sheep, swine, and poultry, and agents should forbid, and as far as possible prevent, the sale of ponies to Indians. An Indian should be encouraged to accumulate provisions and property for his own sustenance and use, instead of bartering them with the trader for articles for which he has no special need. [Sec. 235, *Ins.*, 1880.]

These regulations, as well as the provisions of the treaty, look to inducing the Indian to adopt agricultural life. That necessarily implies improvement of the land and building of dwellings, granaries, barns,

and structures incident to agriculture. These are means to the end sought. Attached to the land the structures become, in the ordinary understanding and in the ordinary legal view, land. No legislation of the State giving, or attempting to give, such improvements another character, without the concurrence of the United States, can be permitted. Whatever may be the relation of the improvements to the land as between the United States and the Indian, both land and improvements are realty as between the United States and the State and as between the Indian and the State.

Treaty provisions and compact stipulations, or agreements in the nature of treaties, should obviously be interpreted in the light of their ordinary understanding and legal import, rather than by technical rules, especially such as are devised by one of the contracting parties after the obligation is assumed and possibly with view to lessening that obligation. This is especially true where the two contracting parties stipulate with view to the rights of another, dependent and weaker, whose interests are intended to be protected.

If the tax can be imposed upon improvements, its payment must some way be enforcible. If the land itself is not taxable, it obviously can not be subjected to a lien for nonpayment of taxes imposed upon the improvements upon it. The tax, then, must be enforced by distress and severance of the improvements from the land, and thereby the effort and policy of the Government for the reclamation of the Indian to habits

of civilized life, house dwelling and tillage of the soil, will be defeated.

Viewing the terms of the stipulation between the Government and the State, the object in view and the effect of the construction contended for, it must be concluded that permanent improvements on allotted land, constructed with view to its utilization by the allottee as his dwelling and for the uses of civilized life, or convenient to his use, are within the protection of the condition imposed by the enabling act, and are exempt from taxation during the trust period that the land is so exempt, such improvements being in legal contemplation land.

It follows that the second question submitted should be answered in the negative.

III.

The personal property, horses, cattle, and other property of like character, issued to the Indians by the United States, branded "I. D.," as shown by the bill, were property of the United States, and not taxable by State authority.

The United States, in its work of maintenance and civilization of the Indians, under obligation of its treaty stipulations, or of its own motion, annually appropriates several million dollars—for instance, March 1, 1899 (30 Stat., 924, 946), about $7,600,000—and it is wont to make such provision as that (ib., 946):

> * * * the Secretary of the Interior, under direction of the President, may use any sums

appropriated in this act for subsistence, and not absolutely necessary for that purpose, for the purchase of stock cattle for the benefit of the tribe for which such appropriation is made, and shall report to Congress, at its next session thereafter, an account of his action under this provision. * * *

In the practice of the Department domestic animals, farming implements, etc., so purchased and issued to Indians as aids to their adopting a civilized life, do not become their property. The regulations governing their issue provide:

357. In cases of issue of wagons, agricultural implements, etc., the Indian receiving the same must sign, in addition to his receipt, an agreement that he will not sell, exchange, or in any way dispose of the article or articles issued to him without the full knowledge and consent of the agent. (Sec. 363, Reg., 1884.)

360. When cattle are issued to Indians, either for work oxen or for breeding purposes, each animal must be branded, in addition to the I. D. brand, with a private mark, to indicate the person to whom it is issued; a record of such private marks must be kept in the agency office. The agent is also required to see that the increase of all issued cattle is similarly branded. (Sec. 366, Reg., 1884.)

361. Cattle bearing the I. D. brand, but not the private issue mark, as explained in the preceding section, will be taken possession of by the agent as Government property. (Sec. 367, Reg., 1884.)

364. An agreement not to sell or otherwise unlawfully dispose of the cattle issued to them must invariably accompany the receipts of the Indians to whom the cattle are issued. (Sec. 369, Reg., 1884.)

The act of July 4, 1884 (23 Stat., 76, 94), provides:

> That where Indians are in possession or control of cattle or their increase, which have been purchased by the Government, such cattle shall not be sold to any person not a member of the tribe to which the owners of the cattle belong, or to any citizen of the United States, whether intermarried with the Indians or not, except with the consent in writing of the agent of the tribe to which the owner or possessor of the cattle belongs. And all sales made in violation of this provision shall be void, and the offending purchaser, on conviction thereof, shall be fined not less than $500, and imprisoned not less than six months.

Section 2138 of the Revised Statutes of the United States provides:

> Every person who drives or removes, except by authority of an order lawfully issued by the Secretary of War, connected with the movement or subsistence of troops, any cattle, horses, or other stock from the Indian country for the purposes of trade or commerce, shall be punishable by imprisonment for not more than three years, or by a fine of not more than five thousand dollars, or both.

The property described in the bill and certificate, branded "I. D.," was property of the United States, as

shown by the brand and by the allegation that it in fact was issued by the Government. The taxation of it was a tax upon the property of the United States used for the purpose of civilization of the Indians, to whose use it had been committed and which its agents were instructed, is (Reg. 361, *supra*) to "be taken possession of as Government property," if found in the possession of any one not an Indian. The purchase of it by any one not an Indian was expressly prohibited by statute, and the purchaser made liable to a fine of $500 for its purchase.

Clearly, as the maintenance and civilization of the Indians is a matter of Government concern, the agencies to be employed are purely political questions, and are to be determined solely by Congress and the Executive under Congress in administering the laws framed for that object. Until the Government consents to the taxation of its property and agencies so employed the State can not make them subject to taxation. *Van Brocklin* v. *Tennessee* (117 U. S., 151).

The third question submitted must, therefore, be answered in the negative.

IV.

The United States as owner holding the legal title to all the property real and personal, and trustee obligated at a future time to convey the legal title to the lands free from incumbrance, has such interest therein as entitles it to maintain this suit.

As to the realty, whether the United States be regarded as owner or as trustee of an express trust,

clearly it may maintain any action necessary for protection of the estate. As to the personalty, clearly it may do so as owner simply. If the contentions in the preceding points are well taken, an affirmative answer to this question is the necessary corollary to negative answers to the three preceding. In any event, the United States, as sovereign guardian of its dependent Indian wards, is in the very nature of things so charged with the duty of protecting them and their property as to fully qualify it to maintain such a suit.

There is not remedy at law sufficiently prompt and efficacious to deprive equity of jurisdiction.

As to the land, there is no remedy at law until a sale should be made for the taxes and the purchaser bring an action for possession. When such action had been defeated there would remain of record the sale for taxes and the treasurer's deed assuming to convey title, which, though invalid, would remain a blot upon the title not removable except by an action for its cancellation. It would seem that an injunction should be allowed *to prevent cloud on title to land* in any case where equity would interpose to remove such cloud after it had been cast.

If the United States or the Indians own the land they are not taxable, and an injunction against their being taxed will be allowed. *Railway Company* v. *McShane* (22 Wall., 444, 462, 464); *Wisconsin Central R. R. Co.* v. *Price County* (133 U. S., 496, 511).

The land, by whatever title held, and the personalty are but agencies of the United States, employed in furtherance of its Indian policy, and so are exclusively

under its legislative power. If taxation is void because levied in violation of laws of the United States upon property employed in the sphere of the governmental powers of the United States, the enforcement of such tax may be enjoined, though the property does not belong to the Government. Thus, an injunction will issue to restrain illegal assessment of national-bank shares. *Whitbeck* v. *Mercantile National Bank of Cleveland* (127 U. S., 193).

The remedy at law is not adequate, in that it is not prompt or efficient. It is uncertain when enforcement of the tax will be attempted. For the United States to avail itself of legal remedies for recaption of personal property taken by distress, it would be necessary that the Indian agent be constantly on the alert, ready to protect it, thus necessarily diverting his attention from other business committed to him.

In respect to improvements, such as the dwellings of Indians on their allotted lands, irreparable injury must inevitably result if injunction is not allowed. As shown above as to this character of property, enforcement of the tax could only be made by distress and sale and removal of the improvements from the land. Such removal is the practical destruction and great impairment of value of the things so severed from the land, not adequately compensable in damages, which are uncertain in their measure, and necessitate delay in their enforcement and collection. There is, therefore, no adequate remedy at law. To exclude jurisdiction in equity, the legal remedy must be prompt

and efficient. The court held in *Kilbourn* v. *Sunderland* (130 U. S., 505, 514) that:

> The jurisdiction in equity attaches unless the legal remedy, both in respect to the final relief and the mode of obtaining it, is as efficient as the remedy which equity would confer under the same circumstances.

The answer to the fifth question should therefore be in the negative.

Respectfully submitted.

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